

NORTH CAROLINA  
DEPARTMENT OF COMMERCE  
**DIVISION OF EMPLOYMENT SECURITY**

**HIGHER AUTHORITY APPEALS**

**FORM DECISIONS TEMPLATES**

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NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

Decision No.

ATTN:

Claimant

Employer

Pursuant to the November 1, 2011 Order and N.C.G.S. §96-15(e), this cause has come on before the undersigned to consider the '**S APPEAL** from a decision by Appeals Referee under Appeals Docket No. . The record evidence has been reviewed in its entirety.

As the ultimate fact-finder in cases involving contested claims for unemployment insurance benefits, the undersigned concludes that the facts found by the Appeals Referee were based on competent evidence and adopts them as its own. The undersigned also concludes that the Appeals Referee properly and correctly applied the Employment Security Law (G.S. §96-1 et seq.) to the facts as found, and the resultant decision was in accordance with the law and fact.

The decision of the Appeals Referee is (**AFFIRMED**)(**REVERSED**)(**MODIFIED**).

The claimant is **DISQUALIFIED** for unemployment insurance benefits beginning  
(**NOT DISQUALIFIED** and will receive unemployment insurance benefits beginning

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

---

Assistant Secretary of Commerce for the  
Division of Employment Security

**APPEALS RIGHTS:**

Appeals from this decision are filed with the Clerk of Superior Court by the claimant in the county in which he resides, or by the employer in the county in which it has its principal place of business. If a party does not reside in any county or have a principal place of business in any county in North Carolina, appeals must be filed with the Clerk of Superior Court of Wake County, North Carolina or with the Clerk of Superior Court of the North Carolina county in which the controversy arose.

This decision will become final thirty (30) days after mailing unless Judicial Review is perfected pursuant to G.S. §96-15(h) & (i). For further information, see the pamphlet entitled "Appealing a Decision," which is available in the local offices and enclosed with this decision.

Copies of any Petition for Judicial Review filed with the Clerk of Superior Court must be served within ten (10) days of the filing of the petition, by personal service or by certified mail, return receipt requested, upon the Department of Commerce and upon all parties of record to the proceedings. The Department of Commerce's registered process agent for service of its copy of any petition is: Thomas H. Hodges, Jr., Chief Counsel, c/o Legal Services Section, P. O. Box 25903, Raleigh, NC 27611-5903.

**NOTE:** If you are served with a Petition for Judicial Review by another party, you will not be a party to the Judicial Review unless you notify the court within ten (10) days after your receipt of the petition of your desire to become a party or file a motion to intervene as provided in G.S. §1A-1, Rule 24.

**POST-DECISION PROCEEDINGS:**

Any motion, petition or request for rehearing or reconsideration of this decision shall be filed with the Senior Deputy Commissioner no later than ten (10) days after the date the decision was mailed. Further, the motion, petition or request must contain a statement that a copy was served on any other party to the proceeding. The grounds on which such relief may be granted are set forth in ESC Regulation No. 21.16(D)(2), which is available for examination in all offices of the Division of Employment Security. Any motion, petition, or request for rehearing or reconsideration may be mailed, faxed, or e-mailed to the Senior Deputy Commissioner. The mailing address is: Senior Deputy Commissioner, c/o Legal Services Division, P.O. Box 25903, Raleigh, NC 27611-5903. The fax number is (919) 715-7193. The e-mail address is: sr.deputycommr@ncesc.gov

**NOTE:** Post-Decision proceedings stop or toll the 30-day period for seeking judicial review from running.

**IMPORTANT – SEE FOLLOWING PAGE**

Decision No.  
Page Three of Three

NOTICE TO ALL INTERESTED PARTIES:

Pursuant to 2011 N.C. Sess. Laws 401, effective November 1, 2011, the Employment Security Commission of North Carolina (Commission) became the Division of Employment Security of the North Carolina Department of Commerce. Decisions that would have been made by the Commission are now made by the Department of Commerce (Department). Any references to "Commission" or "ESC" in Department decisions refer to exhibits, publications and proceedings of the Commission prior to November 1, 2011.

Appellate decisions, and precedent decisions and interpretations issued by the Commission, may be referenced in decisions issued by the Department; their value as governing authority continues to apply to Department decisions. ESC regulations remain in full force and effect until readopted by the Department. Any changes in the Employment Security Law became effective November 1, 2011 and Department decisions reflect the Employment Security Law in force as of that date.

Appeal Filed:

Decision Mailed:

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

Decision No.

ATTN:

Claimant

Employer

Pursuant to the November 1, 2011 Order and N.C.G.S. §96-15(e), this cause has come on before the undersigned to consider what has been acknowledged by the Appeals Department as the '**S APPEAL**' from a decision by Appeals Referee under Appeals Docket No. . The record has been thoroughly reviewed and examined.

The acknowledged appeal was entered by an individual named of . There is nothing in the record to show that this individual is supervised by an attorney pursuant to the requirements of G.S. §96-17(b). Therefore, no party aggrieved by the decision of the Appeals Referee has entered an appeal as required by G.S. §96-15(c).

The 's appeal is **DISMISSED**.

The decision/order for dismissal by the Appeals Referee is **FINAL**.

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

---

Assistant Secretary of Commerce for the  
Division of Employment Security

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This decision will become final thirty (30) days after mailing unless Judicial Review is perfected pursuant to G.S. §96-15(h) & (i). For further information, see the pamphlet entitled "Appealing a Decision," which is available in the local offices and enclosed with this decision.

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**NOTE:** If you are served with a Petition for Judicial Review by another party, you will not be a party to the Judicial Review unless you notify the court within ten (10) days after your receipt of the petition of your desire to become a party or file a motion to intervene as provided in G.S. §1A-1, Rule 24.

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Page Three of Three

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Appeal Filed:

Decision Mailed:



NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

Decision No.

ATTN:

Claimant

Employer

Pursuant to the November 1, 2011 Order and N.C.G.S. §96-15(e), this cause has come on before the undersigned to consider the 'S **APPEAL** from a decision by Appeals Referee under Appeals Docket No. . The record evidence and any briefs or written arguments timely submitted have been reviewed in their entirety.

**OPTIONAL PARAGRAPH, IF APPLICABLE** - - - - The "How to appeal an Initial Determination and Participate in a Hearing" pamphlet was mailed to the with a copy of the Determination by Adjudicator under Docket No. on , . At page 5 of the pamphlet, the was notified that the should attend the hearing before the Appeals Referee although the Determination was favorable to the .

The claimant/employer, in his/her/its appeal, offers information that was not included in any testimony and/or document presented under oath and subject to appropriate cross-examination at the evidentiary hearing held in this case. Pursuant to ESC Regulation No. 14.14, the Notice of Hearing, Commission Exhibit No. , was mailed to all parties on , . Among other things, the Notice stated:

**HOW TO GIVE EVIDENCE:** Sworn testimony is necessary. This hearing will be your only chance to testify and present evidence. If you want witnesses to testify, they must do so at the hearing. If you have documents which you wish to be considered, you must bring them to the hearing. Please bring the original document and two copies. The Appeals Referee will not take testimony or evidence from witnesses who are not at the hearing.

It is clear from the foregoing written notice that the was made aware of the obligation to appear at the hearing before the Appeals Referee to present all testimony and other evidence. The record is absent any indication that the was prevented from appearing at the hearing, or presenting all testimony or documentary evidence, or requesting a change in the date and/or time of the hearing. The undersigned, therefore, concludes that the was afforded procedural due process. The undersigned may not reopen this matter merely because the did not safeguard the 's right to present testimony or other evidence by appearing at the hearing or requesting and obtaining a change in the date and/or time of the hearing for good cause shown, or ensuring that

all witnesses attended the hearing. See, Douglas v. J.C. Penney Company, 67 N.C.App. 344, 313 S.E.2d 176 (1984). The undersigned is restricted to considering only that evidence presented at the hearing. Patrick v. Cone Mills Corporation, 64 N.C.App. 722, 308 S.E.2d 476 (1983).  
Decision No.  
Page Two of Three

As the ultimate fact finder in cases involving contested claims for unemployment insurance benefits, the undersigned concludes that the facts found by the Appeals Referee are supported by competent and credible evidence contained in the record, and adopts them as its own. Furthermore, the undersigned concludes that the Appeals Referee properly and correctly applied the Employment Security Law (G.S. §96-1 et seq.) to the facts as found, and the resultant decision was in accordance with law and fact.

The decision of the Appeals Referee is (**AFFIRMED**)(**REVERSED**)(**MODIFIED**).

The claimant is **DISQUALIFIED** for unemployment insurance benefits beginning .  
(**NOT DISQUALIFIED** and will receive unemployment insurance benefits beginning .

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

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Assistant Secretary of Commerce for the  
Division of Employment Security

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**POST-DECISION PROCEEDINGS:**

Any motion, petition or request for rehearing or reconsideration of this decision shall be filed with the Senior Deputy Commissioner no later than ten (10) days after the date the decision was mailed. Further, the motion, petition or request must contain a statement that a copy was served on any other party to the proceeding. The grounds on which such relief may be granted are set forth in ESC Regulation No. 21.16(D)(2), which is available for examination in all offices of the Division of Employment Security. Any motion, petition, or request for rehearing or reconsideration may be mailed, faxed, or e-mailed to the Senior Deputy Commissioner. The mailing address is: Senior Deputy Commissioner, c/o Legal Services Division, P.O. Box 25903, Raleigh, NC 27611-5903. The fax number is (919) 715-7193. The e-mail address is: sr.deputycommr@ncesc.gov

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**NOTICE TO ALL INTERESTED PARTIES:**

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Appeal Filed:

Decision Mailed:

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

Decision No.

ATTN:

Claimant

Employer

Pursuant to the November 1, 2011 Order and N.C.G.S. §96-15(e), this cause has come on before the undersigned to consider the '**S APPEAL**' from a decision by Appeals Referee under Appeals Docket No. . The record evidence has been reviewed in their entirety.

The cassette tape/digital recording(s) of the hearing before the Appeals Referee is/are substantially inaudible. Thus, the undersigned is prevented from reviewing all of the evidence elicited in this matter.

Based on the foregoing, the decision of the Appeals Referee must be vacated. Furthermore, the cause must be remanded to the Appeals Referee to (conduct a hearing to elicit additional evidence on matters as set forth herein) (conduct a **de novo hearing**).

At the conclusion of the hearing on remand, the Appeals Referee must issue a new decision with new findings of fact and conclusions of law. These findings of fact shall state the procedural history of the case, including all orders of continuance and remands, reasons for the remands, a summary of the requirements of the remand orders, and the parties and witnesses appearing at each of the hearings that were conducted in the matter. (Although the Appeals Referee may incorporate previous findings of fact into the new decision in the interest of judicial economy, it would be inappropriate and usually reversible error for the Appeals Referee to merely recite findings of fact made in previous decisions. Additional findings must be made, and it must be evident from the new decision following the hearing on remand, that the Appeals Referee heard and considered the evidence and complied with the remand order of the undersigned).

The decision of the Appeals Referee is **VACATED**.

The cause is **REMANDED** for further proceedings consistent with this decision.

**IMPORTANT – SEE FOLLOWING PAGE**

IT IS ORDERED that all interested parties shall be duly notified as to the time and place of the hearing on remand, and the Appeals Referee shall identify the new decision at the conclusion of the hearing by using all previously assigned docket numbers.

IT IS ALSO ORDERED that all documents of the remanded record transmitted to the Appeals Department with this decision shall be forwarded to the Appeals Referee along with the notice of the hearing, and said documents shall be marked as exhibits and entered into the record by the Appeals Referee on remand in order that the record may be complete as required by law and ESC Regulation No 14.19. No overpayment is established as to the benefits paid pursuant to the decision of the Appeals Referee. G.S. §96-9(c)(2)b.

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

---

Assistant Secretary of Commerce for the  
Division of Employment Security

NOTICE TO ALL INTERESTED PARTIES:

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The Appeals Department has informed the undersigned that the cassette tape recording(s) of the evidentiary hearing conducted in this matter cannot be located. Thus, the undersigned is prevented from reviewing the testimonial evidence elicited at the hearing.

Based on the foregoing, the decision of the Appeals Referee must be vacated. Furthermore, the cause must be remanded to the Appeals Referee to conduct a **de novo hearing**.

At the conclusion of the hearing on remand, the Appeals Referee must issue a new decision with new findings of fact and conclusions of law. These findings of fact shall state the procedural history of the case, including all orders of continuance and remands, reasons for the remands, a summary of the requirements of the remand orders, and the parties and witnesses appearing at each of the hearings that were conducted in the matter.

The decision of the Appeals Referee is **VACATED**.

The cause is **REMANDED** for further proceedings consistent with this decision.

IT IS ORDERED that all interested parties shall be duly notified as to the time and place of the hearing on remand, and the Appeals Referee shall identify the new decision at the conclusion of the hearing by using all previously assigned docket numbers.

**IMPORTANT – SEE FOLLOWING PAGE**

IT IS ALSO ORDERED that all documents of the remanded record transmitted to the Appeals Department with this decision shall be forwarded to the Appeals Referee along with the notice of the hearing, and said documents shall be marked as exhibits and entered into the record by the Appeals Referee on remand in order that the record may be complete as required by law and ESC Regulation No. 14.19. No overpayment is established as to the benefits paid pursuant to the decision of the Appeals Referee. G.S. §96-9(c)(2)b.

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NORTH CAROLINA DEPARTMENT  
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Appeal Filed:

Decision Mailed:

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

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ATTN:

Claimant

Employer

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As the ultimate fact-finder in cases involving contested claims for unemployment insurance benefits, the undersigned adopts as its own the Appeals Referee's findings of fact. Furthermore, the Commission adopts the conclusions of law made by the Appeals Referee since they reflect a proper and correct application of the Employment Security Law (G.S. §96-1 et seq) to the facts as found.

Although the claimant disagrees with the decision of the Appeals Referee, the evidence is very clear that the claimant had the option of continuing his/her employment. The claimant has not alleged or proven that his/her employer played any part in his/her decision to leave the job and relocate to be with the spouse who has been transferred. Accordingly, the claimant's good personal reason for leaving work was definitely not caused or brought by his/her own employer. In such a spousal relocation case, the law specifically provides that the claimant may be entitled to receive unemployment insurance benefits only after serving a 2-week period of disqualification except when the spouse has been reassigned from one military assignment to another when no disqualification is imposed. G.S. §96-14(1d). Prior to this provision of the law being enacted in July 1993, the claimant would have been subjected to being disqualified from receiving benefits for a maximum of two (2) years. The 2003 amendment reduced the disqualification from five (5) to two (2) weeks and eliminated the disqualification for the claimant whose spouse is reassigned from one military assignment to another.

The decision of the Appeals Referee is (**AFFIRMED**)(**REVERSED**)(**MODIFIED**).

The claimant is (**DISQUALIFIED** for unemployment insurance benefits beginning ,  
(**NOT DISQUALIFIED** and will receive unemployment insurance benefits beginning ,  
(**DISQUALIFIED** for unemployment insurance benefits for a period of two (2) weeks beginning  
, and ending .



This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

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Assistant Secretary of Commerce for the  
Division of Employment Security

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**IMPORTANT – SEE FOLLOWING PAGE**

Decision No.  
Page Three of Three

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IN THE MATTER OF:

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Employer

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Based on the foregoing, the decision of the Appeals Referee must be vacated. Furthermore, the cause must be remanded to the Appeals Referee to conduct a **de novo hearing**.

At the conclusion of the hearing on remand, the Appeals Referee must issue a new decision with new findings of fact and conclusions of law. These findings of fact shall state the procedural history of the case, including all orders of continuance and remands, reasons for remands, a summary of the requirements of the remand orders, and the parties and witnesses appearing at each of the hearings that were conducted in the matter.

The decision of the Appeals Referee is **VACATED**.

The cause is **REMANDED** for further proceedings consistent with this decision.

**IMPORTANT-SEE FOLLOWING PAGE**

IT IS ORDERED that all interested parties shall be duly notified as to the time and place of the hearing on remand, and the Appeals Referee shall identify the new decision at the conclusion of the hearing by using all previously assigned docket numbers.

IT IS ALSO ORDERED that all documents of the remanded record transmitted to the Appeals Department with this decision shall be forwarded to the Appeals Referee along with the notice of the hearing, and said documents shall be marked as exhibits and entered into the record by the Appeals Referee on remand in order that the record may be complete as required by law and ESC Regulation No. 14.19. No overpayment is established as to the benefits paid pursuant to the decision of the Appeals Referee. G.S. §96-9(c)(2)b.

This the .

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OF COMMERCE

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Date of Appeal:

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Claimant

Employer

Pursuant to the November 1, 2011 Order and N.C.G.S. §96-15(e), this cause has come on before the undersigned to consider the 'S **APPEAL** from a decision/an order for dismissal by Appeals Referee under Appeals Docket No. .

G.S. §96-15(c), in pertinent part, provides:

Whenever an appeal is taken from a decision of the appeals referee or hearing officer; the appealing party shall submit a clear written statement containing the grounds for the appeal within the time allowed by law for taking the appeal, and if such timely statement is not submitted, the Board of Review may dismiss the appeal.

In the present case, it appears from the record that the parties were informed of the "grounds" requirement on page(s) of the decision/order of the Appeals Referee, mailed to all interested parties on . The following appeal rights information appeared:

This decision is the final decision of the Commission unless within ten (10) days from the date it was mailed, the appealing party submits a clear, written statement containing the grounds for the appeal. If such timely statement is not submitted, the appeal may be dismissed.

It also appears from the record that the following statement of appeal from the was received:

The above statement clearly fails to state any grounds for the 's appeal. Consequently, it does not meet the mandatory requirement of G.S. §96-15(c) that a clear statement of the grounds for the appeal be filed. The appeal may be dismissed for this reason. The undersigned, in its discretion, concludes that the appeal will be dismissed.

The 's appeal is **DISMISSED**.

The decision/order for dismissal by the Appeals Referee is **FINAL**.

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

---

Assistant Secretary of Commerce for the  
Division of Employment Security

APPEALS RIGHTS:

Appeals from this decision are filed with the Clerk of Superior Court by the claimant in the county in which he resides, or by the employer in the county in which it has its principal place of business. If a party does not reside in any county or have a principal place of business in any county in North Carolina, appeals must be filed with the Clerk of Superior Court of Wake County, North Carolina or with the Clerk of Superior Court of the North Carolina county in which the controversy arose.

This decision will become final thirty (30) days after mailing unless Judicial Review is perfected pursuant to G.S. §96-15(h) & (i). For further information, see the pamphlet entitled "Appealing a Decision," which is available in the local offices and enclosed with this decision.

Copies of any Petition for Judicial Review filed with the Clerk of Superior Court must be served within ten (10) days of the filing of the petition, by personal service or by certified mail, return receipt requested, upon the Department of Commerce and upon all parties of record to the proceedings. The Department of Commerce's registered process agent for service of its copy of any petition is: Thomas H. Hodges, Jr., Chief Counsel, c/o Legal Services Division, P. O. Box 25903, Raleigh, NC 27611-5903.

**NOTE:** If you are served with a Petition for Judicial Review by another party, you will not be a party to the Judicial Review unless you notify the court within ten (10) days after your receipt of the petition of your desire to become a party or file a motion to intervene as provided in G.S. §1A-1, Rule 24.

**IMPORTANT – SEE FOLLOWING PAGE**

Decision No.  
Page Three of Three

**POST-DECISION PROCEEDINGS:**

Any motion, petition or request for rehearing or reconsideration of this decision shall be filed with the Senior Deputy Commissioner no later than ten (10) days after the date the decision was mailed. Further, the motion, petition or request must contain a statement that a copy was served on any other party to the proceeding. The grounds on which such relief may be granted are set forth in ESC Regulation No. 21.16(D)(2), which is available for examination in all offices of the Division of Employment Security. Any motion, petition, or request for rehearing or reconsideration may be mailed, faxed, or e-mailed to the Senior Deputy Commissioner. The mailing address is: Senior Deputy Commissioner, c/o Legal Services Division, P.O. Box 25903, Raleigh, NC 27611-5903. The fax number is (919) 715-7193. The e-mail address is: [sr.deputycommr@ncesc.gov](mailto:sr.deputycommr@ncesc.gov).

**NOTE: Post-Decision proceedings stop or toll the 30-day period for seeking judicial review from running.**

**NOTICE TO ALL INTERESTED PARTIES:**

Pursuant to 2011 N.C. Sess. Laws 401, effective November 1, 2011, the Employment Security Commission of North Carolina (Commission) became the Division of Employment Security of the North Carolina Department of Commerce. Decisions that would have been made by the Commission are now made by the Department of Commerce (Department). Any references to "Commission" or "ESC" in Department decisions refer to exhibits, publications and proceedings of the Commission prior to November 1, 2011.

Appellate decisions, and precedent decisions and interpretations issued by the Commission, may be referenced in decisions issued by the Department; their value as governing authority continues to apply to Department decisions. ESC regulations remain in full force and effect until readopted by the Department. Any changes in the Employment Security Law became effective November 1, 2011 and Department decisions reflect the Employment Security Law in force as of that date.

Appeal Filed:

Decision Mailed:

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

Decision No.

ATTN:

Claimant

Employer

Pursuant to the November 1, 2011 Order and N.C.G.S. §96-15(e), this cause has come on before the undersigned to consider the '**S APPEAL**' from a decision/an order for dismissal by Appeals Referee under Appeals Docket No. , mailed to all interested parties on , and the applicable appeal rights were set out on page ; and,

It further appearing that the applicable appeal rights expired on (which includes the extra three days); and,

It also appearing that the 's appeal was received by the Office ( Department) of the Division of Employment Security/Department of Commerce on .

The undersigned concludes that the 's appeal was not filed within the time period established by law. Thus, the appeal was untimely and must be denied for failure to meet the mandatory requirements of timeliness as set forth in G.S. §96-15(c) and (c2). Furthermore, the has not shown any good cause for failing to meet the timeliness requirements pursuant to ESC Regulation No. 21.11(E). No basis for permitting the late appeal has been shown. Riddick v. Atlantic Veneer, 94 N.C.App. 201, 379 S.E.2d 661 (1989).

The 's appeal is **DISMISSED**.

The decision/order for dismissal by the Appeals Referee is **FINAL**.

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

---

Assistant Secretary of Commerce for the  
Division of Employment Security



**APPEALS RIGHTS:**

Appeals from this decision are filed with the Clerk of Superior Court by the claimant in the county in which he resides, or by the employer in the county in which it has its principal place of business. If a party does not reside in any county or have a principal place of business in any county in North Carolina, appeals must be filed with the Clerk of Superior Court of Wake County, North Carolina or with the Clerk of Superior Court of the North Carolina county in which the controversy arose.

This decision will become final thirty (30) days after mailing unless Judicial Review is perfected pursuant to G.S. §96-15(h) & (i). For further information, see the pamphlet entitled "Appealing a Decision," which is available in the local offices and enclosed with this decision.

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**NOTE:** If you are served with a Petition for Judicial Review by another party, you will not be a party to the Judicial Review unless you notify the court within ten (10) days after your receipt of the petition of your desire to become a party or file a motion to intervene as provided in G.S. §1A-1, Rule 24.

**POST-DECISION PROCEEDINGS:**

Any motion, petition or request for rehearing or reconsideration of this decision shall be filed with the Senior Deputy Commissioner no later than ten (10) days after the date the decision was mailed. Further, the motion, petition or request must contain a statement that a copy was served on any other party to the proceeding. The grounds on which such relief may be granted are set forth in ESC Regulation No. 21.16(D)(2), which is available for examination in all offices of the Division of Employment Security. Any motion, petition, or request for rehearing or reconsideration may be mailed, faxed, or e-mailed to the Senior Deputy Commissioner. The mailing address is: Senior Deputy Commissioner, c/o Legal Services Division, P.O. Box 25903, Raleigh, NC 27611-5903. The fax number is (919) 715-7193. The e-mail address is: [sr.deputycommr@ncesc.gov](mailto:sr.deputycommr@ncesc.gov)

**NOTE:** Post-Decision proceedings stop or toll the 30-day period for seeking judicial review from running.

**IMPORTANT – SEE FOLLOWING PAGE**

Decision No.  
Page Three of Three

NOTICE TO ALL INTERESTED PARTIES:

Pursuant to 2011 N.C. Sess. Laws 401, effective November 1, 2011, the Employment Security Commission of North Carolina (Commission) became the Division of Employment Security of the North Carolina Department of Commerce. Decisions that would have been made by the Commission are now made by the Department of Commerce (Department). Any references to "Commission" or "ESC" in Department decisions refer to exhibits, publications and proceedings of the Commission prior to November 1, 2011.

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Appeal Filed:

Decision Mailed:

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

Decision No.

ATTN:

Claimant

Employer

Pursuant to the November 1, 2011 Order and N.C.G.S. §96-15(e), this cause has come on before the undersigned to consider the '**S APPEAL**' from a decision by Appeals Referee under Appeals Docket No. . The record evidence and any briefs or written arguments timely submitted have been reviewed in their entirety.

In passing upon issues of fact in cases involving contested claims for unemployment insurance benefits, the undersigned is the ultimate judge of the credibility of the witnesses, and of the weight to be given to their testimony. The undersigned may accept or reject the testimony of a witness, either in whole or in part, depending solely upon whether it believes or disbelieves the same. See, Moses v. Bartholomew, 238 N.C. 714, 78 S.E.2d 923 (1953). When the evidence as to the circumstances surrounding a claimant's separation from employment is controverted, the undersigned on must resolve the controversy by making findings of fact based on competent and credible evidence. See, Phillips v. Kincaid Furniture Company, 67 N.C.App. 329, 313 S.E.2d 19 (1984). The undersigned is not bound by the credibility determinations made by the Appeals Referee. Forbis v. Wesleyan Nursing Home, Inc., 73 N.C.App. 166, 325 S.E.2d 651 (1985). If there is a reasonable basis for the credibility determinations and the evidence relied upon is not inherently incredible, the undersigned usually defers to the Appeals Referee's judgment in such matters.

In the appeal, the addresses matters that were resolved by the Appeals Referee based on the credibility of the testimony presented by the witnesses. The undersigned concludes there was a reasonable basis for the credibility determinations made by the Appeals Referee and the evidence relied upon to make these determinations was not inherently incredible.

As the ultimate fact-finder in cases involving contested claims for unemployment insurance benefits, the undersigned concludes that the facts found by the Appeals Referee are supported by competent and credible evidence contained in the record, and adopts them as its own. Furthermore, the undersigned concludes that the Appeals Referee properly and correctly applied the Employment Security Law (G.S. §96-1 et seq.) to the facts as found, and the resultant decision was in accordance with law and fact.

The decision of the Appeals Referee is (**AFFIRMED**)(**REVERSED**)(**MODIFIED**).

The claimant is **DISQUALIFIED** for unemployment insurance benefits beginning  
(**NOT DISQUALIFIED** and will receive unemployment insurance benefits beginning

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

---

Assistant Secretary of Commerce for the  
Division of Employment Security

APPEALS RIGHTS:

Appeals from this decision are filed with the Clerk of Superior Court by the claimant in the county in which he resides, or by the employer in the county in which it has its principal place of business. If a party does not reside in any county or have a principal place of business in any county in North Carolina, appeals must be filed with the Clerk of Superior Court of Wake County, North Carolina or with the Clerk of Superior Court of the North Carolina county in which the controversy arose.

This decision will become final thirty (30) days after mailing unless Judicial Review is perfected pursuant to G.S. §96-15(h) & (i). For further information, see the pamphlet entitled "Appealing a Decision," which is available in the local offices and enclosed with this decision.

Copies of any Petition for Judicial Review filed with the Clerk of Superior Court must be served within ten (10) days of the filing of the petition, by personal service or by certified mail, return receipt requested, upon the Department of Commerce and upon all parties of record to the proceedings. The Department of Commerce's registered process agent for service of its copy of any petition is: Thomas H. Hodges, Jr., Chief Counsel, c/o Legal Services Division, P. O. Box 25903, Raleigh, NC 27611-5903.

**NOTE:** If you are served with a Petition for Judicial Review by another party, you will not be a party to the Judicial Review unless you notify the court within ten (10) days after your receipt of the petition of your desire to become a party or file a motion to intervene as provided in G.S. §1A-1, Rule 24.

**IMPORTANT-SEE FOLLOWING PAGE**

POST-DECISION PROCEEDINGS:

Any motion, petition or request for rehearing or reconsideration of this decision shall be filed with the Senior Deputy Commissioner no later than ten (10) days after the date the decision was mailed. Further, the motion, petition or request must contain a statement that a copy was served on any other party to the proceeding. The grounds on which such relief may be granted are set forth in ESC Regulation No. 21.16(D)(2), which is available for examination in all offices of the Division of Employment Security. Any motion, petition, or request for rehearing or reconsideration may be mailed, faxed, or e-mailed to the Senior Deputy Commissioner. The mailing address is: Senior Deputy Commissioner, c/o Legal Services Division, P.O. Box 25903, Raleigh, NC 27611-5903. The fax number is (919) 715-7193. The e-mail address is: sr.deputycommr@ncesc.gov

**NOTE: Post-Decision proceedings stop or toll the 30-day period for seeking judicial review from running.**

NOTICE TO ALL INTERESTED PARTIES:

Pursuant to 2011 N.C. Sess. Laws 401, effective November 1, 2011, the Employment Security Commission of North Carolina (Commission) became the Division of Employment Security of the North Carolina Department of Commerce. Decisions that would have been made by the Commission are now made by the Department of Commerce (Department). Any references to "Commission" or "ESC" in Department decisions refer to exhibits, publications and proceedings of the Commission prior to November 1, 2011.

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Appeal Filed:

Decision Mailed:

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

Decision No.

ATTN:

Claimant

Employer

Pursuant to the November 1, 2011 Order and N.C.G.S. §96-15(e), this cause has come before the undersigned to consider the '**S APPEAL**' from an order for dismissal entered by Appeals Referee under Appeals Docket No. when the , as the appealing party, failed to appear at the scheduled hearing on , to prosecute the 's appeal from the Determination by Adjudicator under Docket No. . The has moved the undersigned to set aside the aforesaid order and remand the cause for rehearing and decision.

The undersigned concludes that the has shown good cause for the 's failure to appear at the evidentiary hearing to give testimony and other evidence. Thus, the 's request for another hearing must be allowed.

Based on the foregoing, the order of the Appeals Referee must be vacated. Furthermore, the cause must be remanded to the Appeals Referee to conduct a **de novo hearing**.

At the conclusion of the hearing on remand, the Appeals Referee must issue a new decision with new findings of fact and conclusions of law. These findings of fact shall state the procedural history of the case, including all orders of continuance and remands, reasons for the remands, a summary of the requirements of the remand orders, and the parties and witnesses appearing at each of the hearings that were conducted in the matter.

**IMPORTANT - SEE FOLLOWING PAGE**

IT IS ORDERED that all interested parties shall be duly notified as to the time and place of the hearing on remand, and the Appeals Referee shall identify the new decision at the conclusion of the hearing by using all previously assigned docket numbers.

IT IS ALSO ORDERED that all documents of the remanded record transmitted to the Appeals Department with this decision shall be forwarded to the Appeals Referee along with the notice of the hearing, and said documents shall be marked as exhibits and entered into the record by the Appeals Referee on remand in order that the record may be complete as required by law and ESC Regulation No. 14.19. No overpayment of benefits is established as a result of the decision of the Appeals Referee. G.S. §96-9(c)(2)b.

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

---

Assistant Secretary of Commerce for the  
Division of Employment Security

NOTICE TO ALL INTERESTED PARTIES:

Pursuant to 2011 N.C. Sess. Laws 401, effective November 1, 2011, the Employment Security Commission of North Carolina (Commission) became the Division of Employment Security of the North Carolina Department of Commerce. Decisions that would have been made by the Commission are now made by the Department of Commerce (Department). Any references to "Commission" or "ESC" in Department decisions refer to exhibits, publications and proceedings of the Commission prior to November 1, 2011.

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Appeal Filed:

Decision Mailed:

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

Decision No.

ATTN:

Claimant

Employer

Pursuant to the November 1, 2011 Order and N.C.G.S. §96-15(e), this cause has come before the undersigned to consider the '**S APPEAL**' from an order for dismissal by Appeals Referee under Appeals Docket No. entered when the , as the appealing party, failed to appear at the scheduled hearing on , 20 , to prosecute the appeal from a Determination by Adjudicator under Docket No. . The has also moved the undersigned to set aside the aforesaid order and remand the cause for rehearing and decision.

The undersigned has thoroughly examined the record forwarded for review. The undersigned concludes that the Appeals Referee's order is supported by the record. Furthermore, the undersigned concludes that the has failed to show a reason that would justify a reopening of this case for rehearing and decision; i.e., good cause for failure to appear at the hearing or to contact the Appeals Referee to request a change in the hearing date and/or time. Thus, the 's request for another hearing must be denied.

The 's request for rehearing is **DENIED**.

The order for dismissal by the Appeals Referee is **AFFIRMED**.

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

---

Assistant Secretary of Commerce for the  
Division of Employment Security



**APPEALS RIGHTS:**

Appeals from this decision are filed with the Clerk of Superior Court by the claimant in the county in which he resides, or by the employer in the county in which it has its principal place of business. If a party does not reside in any county or have a principal place of business in any county in North Carolina, appeals must be filed with the Clerk of Superior Court of Wake County, North Carolina or with the Clerk of Superior Court of the North Carolina county in which the controversy arose.

This decision will become final thirty (30) days after mailing unless Judicial Review is perfected pursuant to G.S. §96-15(h) & (i). For further information, see the pamphlet entitled "Appealing a Decision," which is available in the local offices and enclosed with this decision.

Copies of any Petition for Judicial Review filed with the Clerk of Superior Court must be served within ten (10) days of the filing of the petition, by personal service or by certified mail, return receipt requested, upon the Department of Commerce and upon all parties of record to the proceedings. The Department of Commerce's registered process agent for service of its copy of any petition is: Thomas H. Hodges, Jr., Chief Counsel, c/o Legal Services Division, P. O. Box 25903, Raleigh, NC 27611-5903.

**NOTE:** If you are served with a Petition for Judicial Review by another party, you will not be a party to the Judicial Review unless you notify the court within ten (10) days after your receipt of the petition of your desire to become a party or file a motion to intervene as provided in G.S. §1A-1, Rule 24.

**POST-DECISION PROCEEDINGS:**

Any motion, petition or request for rehearing or reconsideration of this decision shall be filed with the Senior Deputy Commissioner no later than ten (10) days after the date the decision was mailed. Further, the motion, petition or request must contain a statement that a copy was served on any other party to the proceeding. The grounds on which such relief may be granted are set forth in ESC Regulation No. 21.16(D)(2), which is available for examination in all offices of the Division of Employment Services. Any motion, petition, or request for rehearing or reconsideration may be mailed, faxed, or e-mailed to the Senior Deputy Commissioner. The mailing address is: Senior Deputy Commissioner, c/o Legal Services Division, P.O. Box 25903, Raleigh, NC 27611-5903. The fax number is (919) 715-7193. The e-mail address is: sr.deputycommr@ncesc.gov

**NOTE:** Post-Decision proceedings stop or toll the 30-day period for seeking judicial review from running.

**IMPORTANT – SEE FOLLOWING PAGE**

Decision No.  
Page Three of Three

NOTICE TO ALL INTERESTED PARTIES:

Pursuant to 2011 N.C. Sess. Laws 401, effective November 1, 2011, the Employment Security Commission of North Carolina (Commission) became the Division of Employment Security of the North Carolina Department of Commerce. Decisions that would have been made by the Commission are now made by the Department of Commerce (Department). Any references to "Commission" or "ESC" in Department decisions refer to exhibits, publications and proceedings of the Commission prior to November 1, 2011.

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Appeal Filed:

Decision Mailed:

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

Decision No.

ATTN:

Claimant

Employer

Pursuant to the November 1, 2011 Order and N.C.G.S. §96-15(e), this cause has come on before the undersigned to consider the 'S **APPEAL** from a decision by Appeals Referee under Appeals Docket No. . Due to the 's failure to appear and present testimony and other evidence at the hearing before the Appeals Referee, the has moved the undersigned to set aside the aforesaid decision and remand the cause for additional evidence and a new decision.

The undersigned concludes that the has failed to show to the satisfaction of the undersigned that there exist sufficient reasons for the failure to appear at the evidentiary hearing to give testimony and other evidence. Accordingly, the 's motion for rehearing must be denied.

As the ultimate fact-finder in cases involving contested claims for unemployment insurance benefits, the undersigned further concludes that the findings of fact made by the Appeals Referee were supported by competent evidence contained in the record as presented by the and adopts them as its own. No witness appeared at the hearing before the Appeals Referee to present any evidence on behalf of the in this matter. Thus, it was proper and correct for the Appeals Referee to premise factual findings on the only competent evidence presented in this matter. *See, Patrick v. Cone Mills Corp.*, 64 N.C. App. 722, 308 S.E.2d 476 (1983). The undersigned also concludes that the Appeals Referee properly applied the Employment Security Law (G.S. §96-1 et seq.) to those facts, and the resultant decision was in accordance with law and fact.

The 's motion for rehearing is **DENIED**.

The decision by the Appeals Referee is **AFFIRMED**.

The claimant is **DISQUALIFIED** for unemployment insurance benefits beginning .  
(**NOT DISQUALIFIED** and will receive unemployment insurance benefits beginning

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

---

Assistant Secretary of Commerce for the  
Division of Employment Security

APPEALS RIGHTS:

Appeals from this decision are filed with the Clerk of Superior Court by the claimant in the county in which he resides, or by the employer in the county in which it has its principal place of business. If a party does not reside in any county or have a principal place of business in any county in North Carolina, appeals must be filed with the Clerk of Superior Court of Wake County, North Carolina or with the Clerk of Superior Court of the North Carolina county in which the controversy arose.

This decision will become final thirty (30) days after mailing unless Judicial Review is perfected pursuant to G.S. §96-15(h) & (i). For further information, see the pamphlet entitled "Appealing a Decision," which is available in the local offices and enclosed with this decision.

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POST-DECISION PROCEEDINGS:

Any motion, petition or request for rehearing or reconsideration of this decision shall be filed with the Senior Deputy Commissioner no later than ten (10) days after the date the decision was mailed. Further, the motion, petition or request must contain a statement that a copy was served on any other party to the proceeding. The grounds on which such relief may be granted are set forth in ESC Regulation No. 21.16(D)(2), which is available for examination in all offices

**IMPORTANT - SEE FOLLOWING PAGE**

Decision No.  
Page Three of Three

of the Division of Employment Security. Any motion, petition, or request for rehearing or reconsideration may be mailed, faxed, or e-mailed to the Senior Deputy Commissioner. The mailing address is: Senior Deputy Commissioner, c/o Legal Services Division, P.O. Box 25903, Raleigh, NC 27611-5903. The fax number is (919) 715-7193. The e-mail address is: sr.deputycommr@ncesc.gov

**NOTE: Post-Decision proceedings stop or toll the 30-day period for seeking judicial review from running.**

NOTICE TO ALL INTERESTED PARTIES:

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Appeal Filed:

Decision Mailed:

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

Decision No.

ATTN:

Claimant

Employer

Pursuant to the November 1, 2011 Order and N.C.G.S. §96-15(e), this cause has come before the undersigned, and it appearing that the entered an appeal from the decision of the Appeals Referee under Appeals Docket No. on ; and it further appearing that on , the requested to withdraw said appeal; and it further appearing that no substantial rights of any of the parties involved will be adversely affected by permitting the to withdraw the appeal.

The request of the to withdraw said appeal is **GRANTED**.

The appeal entered by the on , to the decision of the Appeals Referee under Docket No. is **DISMISSED**.

The decision/order for dismissal by the Appeals Referee is **FINAL**.

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

---

Assistant Secretary of Commerce for the  
Division of Employment Security

**IMPORTANT – SEE FOLLOWING PAGE**

NOTICE TO ALL INTERESTED PARTIES:

Pursuant to 2011 N.C. Sess. Laws 401, effective November 1, 2011, the Employment Security Commission of North Carolina (Commission) became the Division of Employment Security of the North Carolina Department of Commerce. Decisions that would have been made by the Commission are now made by the Department of Commerce (Department). Any references to "Commission" or "ESC" in Department decisions refer to exhibits, publications and proceedings of the Commission prior to November 1, 2011.

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Appeal Filed:

Decision Mailed:

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

Decision No.

ATTN:

Claimant

Employer

Pursuant to the November 1, 2011 Order and N.C.G.S. §96-15(e), this cause has come before the undersigned to consider the 'S **APPEAL** from a decision by Appeals Referee under Appeals Docket No. . The record evidence has been reviewed in its entirety.

Based on the foregoing, the decision of the Appeals Referee must be vacated. Furthermore, the cause must be remanded to the Appeals Referee to conduct a hearing to elicit additional evidence as described in the preceding paragraph(s).

At the conclusion of the hearing on remand, the Appeals Referee must issue a new decision with new findings of fact and conclusions of law. These findings of fact shall state the procedural history of the remands, a summary of the requirements of the remand orders, and the parties and witnesses appearing at each of the hearings that were conducted in the matter. Although the Appeals Referee may incorporate previous findings of fact into the new decision in the interest of judicial economy, it would be inappropriate and usually reversible error for the Appeals Referee to merely recite findings of fact made in previous decisions. Additional findings must be made, and it must be evident from the new decision following the hearing on remand, that the Appeals Referee heard and considered the evidence and complied with the remand order of the Commission.

The decision of the Appeals Referee is **VACATED**.

The cause is **REMANDED** for further proceedings consistent with this decision.

**IMPORTANT – SEE FOLLOWING PAGE**



IT IS ORDERED that all interested parties shall be duly notified as to time and place for rehearing, and the Appeals Referee shall identify the new decision at the conclusion of the remanded hearing by using all previously assigned docket numbers.

IT IS FURTHER ORDERED that all documents contained in the record transmitted to the Appeals Referee with this decision, including the appeal and all other correspondence or documents by whatever name or designation, shall be marked as exhibits and entered into the record by the Appeals Referee on remand in order that the record will be complete as required by law and ES Regulation No. 14.19. No overpayment is established as to the benefits paid pursuant to the decision of the Appeals Referee. G.S. §96-9(c)(2)b.

IT IS ALSO ORDERED that a decision in this matter shall be mailed within 30 days from the date of receipt of the remanded record in the Appeals Department, unless an extension is granted in writing by the Chief Appeals Referee and made part of the record.

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

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Assistant Secretary of Commerce for the  
Division of Employment Security

NOTICE TO ALL INTERESTED PARTIES:

Pursuant to 2011 N.C. Sess. Laws 401, effective November 1, 2011, the Employment Security Commission of North Carolina (Commission) became the Division of Employment Security of the North Carolina Department of Commerce. Decisions that would have been made by the Commission are now made by the Department of Commerce (Department). Any references to "Commission" or "ESC" in Department decisions refer to exhibits, publications and proceedings of the Commission prior to November 1, 2011.

Appellate decisions, and precedent decisions and interpretations issued by the Commission, may be referenced in decisions issued by the Department; their value as governing authority continues to apply to Department decisions. ESC regulations remain in full force and effect until readopted by the Department. Any changes in the Employment Security Law became effective November 1, 2011 and Department decisions reflect the Employment Security Law in force as of that date.

Appeal Filed:

Decision Mailed:

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

Decision No.

ATTN:

Claimant

Employer

STATEMENT OF CASE:

The claimant filed a NEW INITIAL CLAIM (NIC) for unemployment insurance benefits effective . Thereafter, the Commission determined that the weekly benefit amount payable to the claimant was \$ and, during the benefit year established by the claimant, the maximum amount of unemployment insurance benefits payable to the claimant was \$

The claim was referred to an adjudicator on the issue of separation from last employment. Adjudicator issued a determination under Docket No. finding the claimant (disqualified)(not disqualified) for benefits. The claimant/employer filed an appeal from the determination and the matter came on to be heard by an Appeals Referee under Appeals Docket No. . The following individuals appeared at the hearing before the Appeals Referee: On , Appeals Referee, issued a decision finding the claimant (disqualified) (not disqualified) from receiving unemployment insurance benefits pursuant to G.S. §96-14( ). The (CLAIMANT)(EMPLOYER) has APPEALED.

FINDINGS OF FACT:

1. The claimant has filed continued claims for unemployment insurance benefits for the period through . The claimant has registered for work with the Commission, has continued to report to an employment office of the Division of Employment Security and has made a claim for benefits in accordance with G.S. §96-15(a).
2. The claimant began working for the employer on or about . He/She last worked for the employer on . as a/an .

MEMORANDUM OF LAW:

The Employment Security Law provides:

An individual shall be disqualified for benefits . . . for the duration of the individual's unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Division that such individual is, at the time such claim is filed, unemployed because the individual was discharged for misconduct connected with his work.

G.S. §96-14(2).

Misconduct connected with the work is defined as intentional acts or omissions evincing disregard of an employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to an employee or evincing carelessness or negligence of such degree as to manifest equal disregard. G.S. §96-14(2). This definition has been judicially interpreted on many occasions. See, e.g., Intercraft Industries Corporation v. Morrison, 305 N.C. 373, 289 S.E.2d 357 (1982); Yelverton v. Kemp Furniture Industries, 51 N.C.App. 215, 275 S.E.2d 553 (1981); In re Cantrell, 44 N.C.App. 718, 263 S.E.2d 1 (1980); In re Collingsworth, 17 N.C.App. 340, 194 S.E.2d 210 (1973).

The Employment Security Law also provides:

An individual shall be disqualified for benefits . . . for a period of not less than four nor more than 13 weeks beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Division that such individual is, at the time the claim is filed, unemployed because he was discharged for substantial fault on his part connected with his work not rising to the level of misconduct. Substantial fault is defined to include those acts or omissions of employees over which they exercised reasonable control and which violate reasonable requirements of the job but shall not include (1) minor infractions of rules unless such infractions are repeated after a warning was received by the employee, (2) inadvertent mistakes made by the employee, nor (3) failures to perform work because of insufficient skill, ability, or equipment. Upon a finding of discharge under this subsection, the individual shall be disqualified for a period of nine weeks unless, based on findings by the Division of aggravating or mitigating circumstances, the period of disqualification is lengthened or shortened within the limits set out above. The length of the disqualification so set by the Division shall not be disturbed by a reviewing court except upon a finding of plain error.

G.S. §96-14(2a).

The essence of the substantial fault statutory provision under which the claimant was disqualified from receiving benefits is that if an employer establishes a reasonable job policy to which an employee can conform, his failure to do so constitutes substantial fault connected with work. Whether a job requirement is reasonable will vary depending on the nature of the employer's operations and what function the employee performs within the operations. The reasonableness of the employer's job requirement must be determined on a case-by-case basis, taking in consideration the "totality of the circumstances surrounding the employee's function within the employer's business." "An employee has "reasonable control" when he has the physical and mental ability to conform his conduct to his employer's job requirements." Lindsey v. Qualex, Inc., 103 N.C.App. 585, 406 S.E.2d 609, rev. denied, 330 N.C. 196, 412 S.E.2d 57 (1991).

When a claimant has been discharged from work, the employer has the burden of proof to show that the claimant's discharge was for a reason that would disqualify the claimant for unemployment insurance benefits. Intercraft, 305 N.C. at 376.

#### CONCLUSIONS OF LAW:

In the present case, the undersigned concludes from the competent and credible evidence and the facts found therefrom that the claimant was discharged from employment. The undersigned further concludes that

Based on the foregoing, the decision of the Appeals Referee must be (affirmed/reversed/modified). Further, the claimant must be held (disqualified) (not disqualified) from receiving unemployment insurance benefits.

#### DECISION:

The decision of the Appeals Referee is (**AFFIRMED**)(**REVERSED**)(**MODIFIED**).

The claimant is **DISQUALIFIED** for unemployment insurance benefits beginning **(NOT DISQUALIFIED)** and will receive unemployment insurance benefits beginning .

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

---

Assistant Secretary of Commerce for the  
Division of Employment Security

### APPEALS RIGHTS:

Appeals from this decision are filed with the Clerk of Superior Court by the claimant in the county in which he resides, or by the employer in the county in which it has its principal place of business. If a party does not reside in any county or have a principal place of business in any county in North Carolina, appeals must be filed with the Clerk of Superior Court of Wake County, North Carolina or with the Clerk of Superior Court of the North Carolina county in which the controversy arose.

This decision will become final thirty (30) days after mailing unless Judicial Review is perfected pursuant to G.S. §96-15(h) & (i). For further information, see the pamphlet entitled "Appealing a Decision," which is available in the local offices and enclosed with this decision.

Copies of any Petition for Judicial Review filed with the Clerk of Superior Court must be served within ten (10) days of the filing of the petition, by personal service or by certified mail, return receipt requested, upon the Department of Commerce and upon all parties of record to the proceedings. The Department of Commerce's registered process agent for service of its copy of any petition is: Thomas H. Hodges, Jr., Chief Counsel, c/o Legal Services Division, P. O. Box 25903, Raleigh, NC 27611-5903.

**NOTE:** If you are served with a Petition for Judicial Review by another party, you will not be a party to the Judicial Review unless you notify the court within ten (10) days after your receipt of the petition of your desire to become a party or file a motion to intervene as provided in G.S. §1A-1, Rule 24.

### POST-DECISION PROCEEDINGS:

Any motion, petition or request for rehearing or reconsideration of this decision shall be filed with the Senior Deputy Commissioner no later than ten (10) days after the date the decision was mailed. Further, the motion, petition or request must contain a statement that a copy was served on any other party to the proceeding. The grounds on which such relief may be granted are set forth in ESC Regulation No. 21.16(D)(2), which is available for examination in all offices of the Division of Employment Security. Any motion, petition, or request for rehearing or reconsideration may be mailed, faxed, or e-mailed to the Senior Deputy Commissioner. The mailing address is: Senior Deputy Commissioner, c/o Legal Services Division, P.O. Box 25903, Raleigh, NC 27611-5903. The fax number is (919) 715-7193. The e-mail address is: [sr.deputycommr@ncesc.gov](mailto:sr.deputycommr@ncesc.gov)

**IMPORTANT – SEE FOLLOWING PAGE**

**NOTE: Post-Decision proceedings stop or toll the 30-day period for seeking judicial review from running.**

**NOTICE TO ALL INTERESTED PARTIES:**

Pursuant to 2011 N.C. Sess. Laws 401, effective November 1, 2011, the Employment Security Commission of North Carolina (Commission) became the Division of Employment Security of the North Carolina Department of Commerce. Decisions that would have been made by the Commission are now made by the Department of Commerce (Department). Any references to "Commission" or "ESC" in Department decisions refer to exhibits, publications and proceedings of the Commission prior to November 1, 2011.

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Appeal Filed:

Decision Mailed:

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

Decision No.

ATTN:

Claimant

Employer

STATEMENT OF CASE:

The claimant filed a NEW INITIAL CLAIM (NIC) for unemployment insurance benefits effective . Thereafter, the Commission determined that the weekly benefit amount payable to the claimant was \$ and, during the benefit year established by the claimant, the maximum amount of unemployment insurance benefits payable to the claimant was \$ .

The claim was referred to an adjudicator on the issue of separation from last employment. Adjudicator issued a determination under Docket No. finding the claimant (disqualified)(not disqualified) for benefits. The claimant/employer filed an appeal from the determination and the matter came on to be heard by an Appeals Referee under Appeals Docket No. . The following individuals appeared at the hearing before the Appeals Referee: . On , , Appeals Referee, issued a decision finding the claimant (disqualified) (not disqualified) from receiving unemployment insurance benefits pursuant to G.S. §96-14( ). The (CLAIMANT)(EMPLOYER) has APPEALED.

FINDINGS OF FACT:

1. At the time the Adjudicator issued a determination in this matter, the claimant had filed claims for unemployment insurance benefits for the period through . The claimant has registered for work with the Commission, has continued to report to an employment office of the Division of Employment Security, and has made a claim for benefits in accordance with G.S. §96-15(a).
2. The claimant began working for the employer on , as a . (S)he last worked for the employer on , as a .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an individual shall be disqualified for benefits for the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because (s)he left work without good cause attributable to the employer. G.S. §96-14(1).

"Good cause" has been interpreted by the courts to mean a reason which would be deemed by reasonable men and women valid and not indicative of an unwillingness to work. Sellers v. National Spinning Company, Incorporated, 64 N.C.App. 567, 307 S.E.2d 774 (1983), disc. rev. denied, 310 N.C. 153, 311 S.E.2d 293 (1984); In re Clark, 47 N.C.App. 163, 266 S.E.2d 854 (1980). "Attributable to the employer" as used in G.S. §96-14(1) means produced, caused, created, or as a result of actions by the employer. Sellers, 64 N.C.App. 567; In re Vinson, 42 N.C.App. 28, 255 S.E.2d 644 (1979). The claimant has the burden of proving that (s)he is not disqualified for benefits under G.S. §96-14(1) and G.S. §96-14(1a). In re Whicker, 56 N.C.App. 253, 287 S.E.2d 439 (1982). When this burden is not carried, G.S. §96-14(1) mandates that the claimant be held disqualified from receiving benefits.

The Employment Security Law further provides:

Where an individual leaves work due solely to a disability incurred or other health condition, whether or not related to the work, he shall not be disqualified for benefits if the individual shows:

- a. That, at the time of leaving, an adequate disability or health condition of the employee, of a minor child who is in the legally recognized custody of the individual, of an aged or disabled parent of the individual, or of a disabled member of the individual's immediate family, either medically diagnosed or otherwise shown by competent evidence, existed to justify the leaving; and
- b. That, at a reasonable time prior to leaving, the individual gave the employer notice of the disability or health condition.

G.S. §96-14(1).

"Immediate family" means an individual's wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, granddaughter, whether the relationship is a biological, step-, half-, or in-law relationship. G.S. §96-8(27).

Prior to its enactment into law, the concept of involuntary leaving due to health reasons has been recognized by our courts in the cases of Milliken and Company v. Griffin, 65 N.C.App. 492, 309 S.E.2d 733 (1983), disc. rev. denied, 311 N.C. 402, 311 S.E.2d 373 (1983), and Hoke v. Brinlaw Manufacturing Company, 73 N.C.App. 553, 327 S.E.2d 254 (1985). Each case of this nature must be decided on its own peculiar facts, and the claimant's actions should be assessed in light of the reasonable person standard. Hoke, 73 N.C.App. at 559. The claimant's testimony concerning the advice of a medical authority need not be substantiated by a doctor's sworn testimony or affidavit. Hoke, 73 N.C.App. at 559; Milliken, 65 N.C.App. at 495.



In passing upon issues of fact in cases involving contested claims for unemployment insurance benefits, the undersigned is the ultimate judge of the credibility of the witnesses, and of the weight to be given to their testimony. The undersigned may accept or reject the testimony of a witness, either in whole or in part, depending solely upon whether it believes or disbelieves the same. Moses v. Bartholomew, 238 N.C. 714, 78 S.E.2d 923 (1953); Phillips v. Kincaid Furniture Co., 67 N.C.App. 329, 313 S.E.2d 19 (1984).

#### CONCLUSIONS OF LAW:

In the present case, any controverted evidence was resolved by making findings of fact based on competent and credible evidence presented at the hearing.

The undersigned concludes from the competent and credible evidence and the facts found therefrom that the claimant left work within the meaning of the law. The undersigned further concludes that reasonable men and women would agree that the claimant's reasons for leaving work (did) (did not) rise to the level of good cause for leaving work within the meaning of G.S. §96-14(1).

Based on the foregoing, the undersigned must conclude that the claimant left work (with) (without) good cause attributable to the employer. The decision of the Appeals Referee must be (affirmed/reversed/modified). Further, the claimant must be held (disqualified) (not disqualified) from receiving unemployment insurance benefits.

#### DECISION:

The decision of the Appeals Referee is (**AFFIRMED**)(**REVERSED**)(**MODIFIED**).

The claimant is **DISQUALIFIED** for unemployment insurance benefits beginning **(NOT DISQUALIFIED)** and will receive unemployment insurance benefits beginning

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

---

Assistant Secretary of Commerce for the  
Division of Employment Security

Decision No.  
Page Four of Five

#### APPEALS RIGHTS:

Appeals from this decision are filed with the Clerk of Superior Court by the claimant in the county in which he resides, or by the employer in the county in which it has its principal

place of business. If a party does not reside in any county or have a principal place of business in any county in North Carolina, appeals must be filed with the Clerk of Superior Court of Wake County, North Carolina or with the Clerk of Superior Court of the North Carolina county in which the controversy arose.

This decision will become final thirty (30) days after mailing unless Judicial Review is perfected pursuant to G.S. §96-15(h) & (i). For further information, see the pamphlet entitled "Appealing a Decision," which is available in the local offices and enclosed with this decision.

Copies of any Petition for Judicial Review filed with the Clerk of Superior Court must be served within ten (10) days of the filing of the petition, by personal service or by certified mail, return receipt requested, upon the Department of Commerce and upon all parties of record to the proceedings. The Department of Commerce's registered process agent for service of its copy of any petition is: Thomas H. Hodges, Jr., Chief Counsel, c/o Legal Services Division, P. O. Box 25903, Raleigh, NC 27611-5903.

**NOTE:** If you are served with a Petition for Judicial Review by another party, you will not be a party to the Judicial Review unless you notify the court within ten (10) days after your receipt of the petition of your desire to become a party or file a motion to intervene as provided in G.S. §1A-1, Rule 24.

#### POST-DECISION PROCEEDINGS:

Any motion, petition or request for rehearing or reconsideration of this decision shall be filed with the Senior Deputy Commissioner no later than ten (10) days after the date the decision was mailed. Further, the motion, petition or request must contain a statement that a copy was served on any other party to the proceeding. The grounds on which such relief may be granted are set forth in ESC Regulation No. 21.16(D)(2), which is available for examination in all offices of the Division of Employment Security. Any motion, petition, or request for rehearing or reconsideration may be mailed, faxed, or e-mailed to the Senior Deputy Commissioner. The mailing address is: Senior Deputy Commissioner, c/o Legal Services Division, P.O. Box 25903, Raleigh, NC 27611-5903. The fax number is (919) 715-7193. The e-mail address is: [sr.deputycommr@ncesc.gov](mailto:sr.deputycommr@ncesc.gov)

#### **IMPORTANT – SEE FOLLOWING PAGE**

Decision No.  
Page Five of Five

**NOTE: Post-Decision proceedings stop or toll the 30-day period for seeking judicial review from running.**

#### NOTICE TO ALL INTERESTED PARTIES:

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Appeal Filed:

Decision Mailed:

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

Decision No.

ATTN:

Claimant

Employer

Pursuant to the November 1, 2011 Order and N.C.G.S. §96-15(e), this cause has come on before the Commission to consider the 'S **APPEAL** from a decision by Appeals Referee under Appeals Docket No. . The record has been reviewed in its entirety.

(INSERT PROBLEMS WITH DECISION OR HEARING)

Based on the foregoing, the decision of the Appeals Referee must be vacated. Furthermore, the cause must be remanded to the Appeals Referee to (conduct a hearing to elicit additional evidence on matters as set forth herein) (conduct a **de novo hearing**).

At the conclusion of the hearing on remand, the Appeals Referee must issue a new decision with new findings of fact and conclusions of law. These findings of fact shall state the procedural history of the case, including all orders of continuance and remands, reasons for the remands, a summary of the requirements of the remand orders, and the parties and witnesses appearing at each of the hearings that were conducted in the matter. (Although the Appeals Referee may incorporate previous findings of fact into the new decision in the interest of judicial economy, it would be inappropriate and usually reversible error for the Appeals Referee to merely recite findings of fact made in previous decisions. Additional findings must be made, and it must be evident from the new decision following the hearing on remand, that the Appeals Referee heard and considered the evidence and complied with the remand order of the Commission.)

The decision of the Appeals Referee is **VACATED**.

The cause is **REMANDED** for further proceedings consistent with this decision.

**IMPORTANT – SEE FOLLOWING PAGE**

The decision of the Appeals Referee is **VACATED**.

The cause is **REMANDED** for further proceedings consistent with this decision.

IT IS ORDERED that all interested parties shall be duly notified as to the time and place of the hearing on remand, and the Appeals Referee shall identify the new decision at the conclusion of the hearing by using all previously assigned docket numbers.

IT IS ALSO ORDERED that all documents of the remanded record transmitted to the Appeals Department with this decision shall be forwarded to the Appeals Referee along with the notice of the hearing, and said documents shall be marked as exhibits and entered into the record by the Appeals Referee on remand in order that the record may be complete as required by law and ESC Regulation No. 14.19. No overpayment of benefits is established as a result of the decision of the Appeals Referee. G.S. §96-9(c)(2)b.

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

---

Assistant Secretary of Commerce for the  
Division of Employment Security

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Appeal Filed:

Decision Mailed:

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

Decision No.

ATTN:

Claimant

Employer

STATEMENT OF CASE:

The claimant filed a NEW INITIAL CLAIM (NIC) for unemployment insurance benefits effective . Thereafter, the Employment Security Commission determined that the weekly benefit amount payable to the claimant was \$ and, during the benefit year established by the claimant, the maximum amount of unemployment insurance benefits payable to the claimant was \$ .

The claim was referred to an adjudicator on the issue of separation from last employment. Adjudicator issued a determination under Docket No. finding the claimant (disqualified)(not disqualified) for benefits. The claimant/employer filed an appeal from the determination and the matter came on to be heard by an Appeals Referee under Appeals Docket No. . The following individuals appeared at the hearing before the Appeals Referee. On , Appeals Referee, issued a decision finding the claimant (disqualified) (not disqualified) from receiving unemployment insurance benefits pursuant to G.S. §96-14( ). The (CLAIMANT)(EMPLOYER) has APPEALED.

FINDINGS OF FACT:

1. The claimant has filed continued claims for unemployment insurance benefits for the period through . The claimant has registered for work with the Commission, has continued to report to an employment office of the Commission and has made a claim for benefits in accordance with G.S. §96-15(a).
2. The claimant began working for the employer on . He/She last worked for the employer on , as a .

MEMORANDUM OF LAW:

The Employment Security Law provides:

An individual shall be disqualified for benefits . . . for the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because the individual was discharged for misconduct connected with his work. Misconduct connected with work is defined as conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.

"Discharge for misconduct with the work" as used in this section is defined to include but not be limited to separation initiated by an employer for reporting to work significantly impaired by alcohol or illegal drugs; consuming alcohol or illegal drugs on employer's premises; conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) while in the employ of said employer.

G.S. §96-14(2).

The definition of misconduct connected with the work has been judicially interpreted on many occasions. See, e.g., Intercraft Industries Corporation v. Morrison, 305 N.C. 373, 289 S.E.2d 357(1982); Lynch v. PPG Industries, 105 N.C.App. 223, 412 S.E.2d 163 (1992) [drug-related separation from employment]; Yelverton v. Kemp Furniture Industries, 51 N.C.App. 215, 275 S.E.2d 553 (1981); In re Cantrell, 44 N.C.App. 718, 263 S.E.2d 1 (1980); In re Collingsworth, 17 N.C.App. 340, 194 S.E.2d 210 (1973).

An employee's refusal to comply with a reasonable and properly implemented drug testing policy, without good cause, constitutes misconduct connected with the work. A positive results from a controlled substance examination may also constitute misconduct connected with work if an employer shows by competent evidence that an employee tested positive for a controlled substance, the chain of custody of the drug-testing sample, the reliability of the controlled substance examination and exactly how the employee violated the employer's drug-testing policy. Only an affidavit or testimony from the laboratory that conducted the examination may prove controlled substance examination results presented in contested claim cases involving a drug-related separation from employment. G.S. §96-15(f); ESC Regulation No. 14.18(S). The affidavit or testimony must explain what the results mean.

That affidavit or testimony must show that the controlled substance examination from which the results were derived met all applicable procedural requirements mandated for controlled substance examinations made necessary by the United States Department of Transportation or the United States Nuclear Regulatory Commission. Notwithstanding the foregoing, the results of the controlled substance examination and compliance with any applicable statutory or regulatory procedural requirements may be deemed proved if the claimant admits or stipulates to such during the hearing before the Appeals Referee or by affidavit. ESC Precedent Decision No. 34, In re Teachey (1999); ESC Precedent Decision No. 21, In re Roecker (1987).

When a claimant has been discharged from work, the employer has the burden of proof to show that the claimant's discharge was for a reason that would disqualify the claimant for unemployment insurance benefits. Intercraft, 305 N.C. at 376.

#### CONCLUSIONS OF LAW:

In the present case, the undersigned concludes from the competent and credible evidence and the facts found therefrom that the claimant was discharged from employment. The undersigned further concludes that

Based on the foregoing, the decision of the Appeals Referee must be (affirmed/reversed/modified). Further, the claimant must be held (disqualified) (not disqualified) from receiving unemployment insurance benefits.

#### DECISION:

The decision of the Appeals Referee is (**AFFIRMED**)(**REVERSED**)(**MODIFIED**).

The claimant is **DISQUALIFIED** for unemployment insurance benefits beginning (NOT **DISQUALIFIED** and will receive unemployment insurance benefits beginning

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

---



Assistant Secretary of Commerce for the  
Division of Employment Security

Decision No.  
Page Four of Five

APPEALS RIGHTS:

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Appeal Filed:

Decision Mailed:

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

Decision No.

ATTN:

Claimant

Employer

Pursuant to the November 1, 2011 Order and N.C.G.S. §96-15(e), this cause has come on before the undersigned to consider the 'S **APPEAL** from a decision by Appeals Referee under Appeals Docket No. . The record evidence and any briefs or written arguments timely submitted have been reviewed in their entirety.

**OPTIONAL PARAGRAPH, IF APPLICABLE** - - - - The "How to appeal an Initial Determination and Participate in a Hearing" pamphlet was mailed to the with a copy of the Determination by Adjudicator under Docket No. on , . At page 5 of the pamphlet, the was notified that the should attend the hearing before the Appeals Referee although the Determination was favorable to the .

The claimant/employer, in his/her/its appeal, offers information that was not included in any testimony and/or document presented under oath and subject to appropriate cross-examination at the evidentiary hearing held in this case. Pursuant to ESC Regulation No. 14.14, the Notice of Hearing by Telephone, Commission Exhibit No. , was mailed to all parties on , . Among other things, the Notice stated:

**HOW TO GIVE EVIDENCE:** Sworn testimony is necessary. This hearing will be your only chance to testify and present evidence. If you want witnesses to testify, they must do so at the hearing. The Appeals Referee will not take testimony or evidence from witnesses who are not available for the hearing. If you have documents which you wish to be considered, you must mail or deliver the documents to both the Appeals Referee and the opposing party. The documents must be received prior to the hearing.

It is clear from the foregoing written notice that the was made aware of the obligation to appear at the hearing before the Appeals Referee to present all testimony and other evidence. The record is absent any indication that the was prevented from appearing at the hearing, or presenting all testimony or documentary evidence, or requesting a change in the date and/or time of the hearing. The undersigned, therefore, concludes that the was afforded procedural due process. The undersigned may not reopen this matter merely because the did not safeguard the 's right to present testimony or other evidence by appearing at the hearing or requesting and

obtaining a change in the date and/or time of the hearing for good cause shown, or ensuring that all witnesses attended the hearing. See, Douglas v. J.C. Penney Company, 67 N.C.App. 344, 313 Decision No.  
Page Two of Three

S.E.2d 176 (1984). The undersigned is restricted to considering only that evidence presented at the hearing. Patrick v. Cone Mills Corporation, 64 N.C.App. 722, 308 S.E.2d 476 (1983).

As the ultimate fact finder in cases involving contested claims for unemployment insurance benefits, the undersigned concludes that the facts found by the Appeals Referee are supported by competent and credible evidence contained in the record, and adopts them as its own. Furthermore, the undersigned concludes that the Appeals Referee properly and correctly applied the Employment Security Law (G.S. §96-1 et seq.) to the facts as found, and the resultant decision was in accordance with law and fact.

The decision of the Appeals Referee is (**AFFIRMED**)(**REVERSED**)(**MODIFIED**).

The claimant is **DISQUALIFIED** for unemployment insurance benefits beginning  
.(**NOT DISQUALIFIED** and will receive unemployment insurance benefits beginning

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

---

Assistant Secretary of Commerce for the  
Division of Employment Security

APPEALS RIGHTS:

Appeals from this decision are filed with the Clerk of Superior Court by the claimant in the county in which he resides, or by the employer in the county in which it has its principal place of business. If a party does not reside in any county or have a principal place of business in any county in North Carolina, appeals must be filed with the Clerk of Superior Court of Wake County, North Carolina or with the Clerk of Superior Court of the North Carolina county in which the controversy arose.

This decision will become final thirty (30) days after mailing unless Judicial Review is perfected pursuant to G.S. §96-15(h) & (i). For further information, see the pamphlet entitled "Appealing a Decision," which is available in the local offices and enclosed with this decision.

**IMPORTANT - SEE FOLLOWING PAGE**

Decision No.  
Page Three of Three

Copies of any Petition for Judicial Review filed with the Clerk of Superior Court must be served within ten (10) days of the filing of the petition, by personal service or by certified mail, return receipt requested, upon the Department of Commerce and upon all parties of record to the proceedings. The Department of Commerce's registered process agent for service of its copy of any petition is: Thomas H. Hodges, Jr., Chief Counsel, c/o Legal Services Division, P. O. Box 25903, Raleigh, NC 27611-5903.

**NOTE:** If you are served with a Petition for Judicial Review by another party, you will not be a party to the Judicial Review unless you notify the court within ten (10) days after your receipt of the petition of your desire to become a party or file a motion to intervene as provided in G.S. §1A-1, Rule 24.

**POST-DECISION PROCEEDINGS:**

Any motion, petition or request for rehearing or reconsideration of this decision shall be filed with the Senior Deputy Commissioner no later than ten (10) days after the date the decision was mailed. Further, the motion, petition or request must contain a statement that a copy was served on any other party to the proceeding. The grounds on which such relief may be granted are set forth in ESC Regulation No. 21.16(D)(2), which is available for examination in all offices of the Division of Employment Security. Any motion, petition, or request for rehearing or reconsideration may be mailed, faxed, or e-mailed to the Senior Deputy Commissioner. The mailing address is: Senior Deputy Commissioner, c/o Legal Services Section, P.O. Box 25903, Raleigh, NC 27611-5903. The fax number is (919) 715-7193. The e-mail address is: sr.deputycommr@ncesc.gov

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Appeal Filed:

Decision Mailed:

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

Decision No.

ATTN:

Claimant

Employer

STATEMENT OF CASE:

The claimant filed a NEW INITIAL CLAIM (NIC) for unemployment insurance benefits effective . Thereafter, the Employment Security Commission determined that the weekly benefit amount payable to the claimant was \$ and, during the benefit year established by the claimant, the maximum amount of unemployment insurance benefits payable to the claimant was \$ .

The claim was referred to an adjudicator on the issue of separation from last employment. Adjudicator issued a determination under Docket No. finding the claimant (disqualified)(not disqualified)(eligible)(not eligible) for benefits. The claimant/employer filed an appeal from the determination and the matter came on to be heard by an Appeals Referee under Appeals Docket No. . The following individuals appeared at the hearing before the Appeals Referee: On , Appeals Referee, issued a decision finding the claimant (disqualified) (not disqualified)(eligible)(not eligible) from receiving unemployment insurance benefits pursuant to G.S. §96- ( ). The (CLAIMANT)(EMPLOYER) has APPEALED.

FINDINGS OF FACT:

1. The claimant has filed continued claims for unemployment insurance benefits for the period through . The claimant has registered for work with the Commission, has continued to report to an employment office of the Division of Employment Security and has made a claim for benefits in accordance with G.S. §96-15(a).
2. The claimant began working for the employer on or about . He/She last worked for the employer on . as a/an .

Decision No.

MEMORANDUM OF LAW:

In re Fallin, Commission Precedent Decision No. 33, provides the following guidance in the case of claimants who are employed by temporary personnel service employers:

An individual employed by a temporary personnel service employer who files a NIC or AIC for unemployment insurance benefits after an assignment has ended or after he is not permitted to return to an assignment and prior to an offer of another assignment shall not be considered separated from employment under G.S. §96-14(1), (2), (2A) or (2B), but shall be deemed unemployed in accordance with G.S. §96-8(10)a. and b., unless the claimant has been discharged. If the claimant has been discharged, then claimant's qualifications to receive benefits shall be determined in accordance with under G.S. §96-14(2), (2A) or (2B).

For any week when a claimant is receiving benefits under G.S. §96-8(10)a. or b. and fails to work all of the work her/his temporary personnel service employer has made available to the claimant, the claimant's eligibility to receive benefits shall be decided under G.S. §96-13(a).

The Employment Security Law of North Carolina provides that for the purpose of establishing a benefit year, an individual shall be deemed to be unemployed:

1. If he has payroll attachment but, because of lack of work during the payroll week for which he is requesting the establishment of a benefit year, he worked less than the equivalent of three customary scheduled full-time days in the establishment, plant, or industry in which he has payroll attachment as a regular employee. If a benefit year is established, it shall begin on the Sunday preceding the payroll week ending date.
2. If he has no payroll attachment on the date he reports to apply for unemployment insurance. If a benefit year is established, it shall begin on the Sunday of the calendar week with respect to which the claimant met the reporting requirements provided by Commission regulation.

G.S. §96-8(10)a.

The Employment Security Law of North Carolina provides that, for benefit weeks within an established benefit year, a claimant shall be deemed to be:

1. Totally unemployed, irrespective of job attachment, if his earnings for such week, including payments defined in subparagraph c below, would not reduce his weekly benefit amount as prescribed by G.S. 96-12(c).
2. Partially unemployed, if he has payroll attachment but because of lack of work during the payroll week for which he is requesting benefits he worked less than three customary scheduled full-time days in the establishment, plant, or industry in which he is employed and whose earnings from such employment (including payments defined in subparagraph c below) would qualify him for a reduced payment as prescribed by G.S. 96-12(c).

Decision No.

3. Part-totally unemployed, if the claimant had no job attachment during all or part of such week and whose earnings for odd jobs or subsidiary work (including payments defined in subparagraph c below) would qualify him for a reduced payment as prescribed by G.S. 96-12(c).

G.S. §96-8(10)b.

The Employment Security Law of North Carolina provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is available for work. G.S. §96-13(a)(3).

CONCLUSIONS OF LAW:

In the present case, any controverted evidence was resolved by making findings of fact based on competent and credible evidence presented at the hearing.

The undersigned concludes from the competent and credible evidence and the facts found therefrom that the claimant was

Based on the foregoing, the decision of the Appeals Referee must be (affirmed/reversed/modified). Further, the claimant must be held (eligible) (not eligible) to receive unemployment insurance benefits.

DECISION:

The decision of the Appeals Referee is (**AFFIRMED**)(**REVERSED**)(**MODIFIED**).

The claimant is **ELIGIBLE** to receive unemployment insurance benefits for the week(s) ending . (NOT **ELIGIBLE** to receive unemployment insurance benefits for the week(s) ending .

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

---

Assistant Secretary of Commerce for the  
Division of Employment Security



### APPEALS RIGHTS:

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This decision will become final thirty (30) days after mailing unless Judicial Review is perfected pursuant to G.S. §96-15(h) & (i). For further information, see the pamphlet entitled "Appealing a Decision," which is available in the local offices and enclosed with this decision.

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### POST-DECISION PROCEEDINGS:

Any motion, petition or request for rehearing or reconsideration of this decision shall be filed with the Senior Deputy Commissioner no later than ten (10) days after the date the decision was mailed. Further, the motion, petition or request must contain a statement that a copy was served on any other party to the proceeding. The grounds on which such relief may be granted are set forth in ESC Regulation No. 21.16(D)(2), which is available for examination in all offices of the Division of Employment Security. Any motion, petition, or request for rehearing or reconsideration may be mailed, faxed, or e-mailed to the Senior Deputy Commissioner. The mailing address is: Senior Deputy Commissioner, c/o Legal Services Division, P.O. Box 25903, Raleigh, NC 27611-5903. The fax number is (919) 715-7193. The e-mail address is: [sr.deputycommr@ncesc.gov](mailto:sr.deputycommr@ncesc.gov)

**IMPORTANT – SEE FOLLOWING PAGE**

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**NOTICE TO ALL INTERESTED PARTIES:**

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Appeal Filed:

Decision Mailed:

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

Decision No.

ATTN:

Claimant

Employer

STATEMENT OF CASE:

The claimant filed a NEW INITIAL CLAIM (NIC) for unemployment insurance benefits effective . Thereafter, the Employment Security Commission determined that the weekly benefit amount payable to the claimant was \$ and, during the benefit year established by the claimant, the maximum amount of unemployment insurance benefits payable to the claimant was \$ .

The claim was referred to an adjudicator on the issue of separation from last employment. Adjudicator issued a determination under Docket No. finding the claimant (disqualified)(not disqualified)(eligible)(not eligible) for benefits. The claimant/employer filed an appeal from the determination and the matter came on to be heard by an Appeals Referee under Appeals Docket No. . The following individuals appeared at the hearing before the Appeals Referee: On , Appeals Referee, issued a decision finding the claimant (disqualified) (not disqualified)(eligible)(not eligible) from receiving unemployment insurance benefits pursuant to G.S. §96- (. The (CLAIMANT)(EMPLOYER) has APPEALED.

FINDINGS OF FACT:

1. The claimant has filed continued claims for unemployment insurance benefits for the period through . The claimant has registered for work with the Commission, has continued to report to an employment office of the Division of Employment Security and has made a claim for benefits in accordance with G.S. §96-15(a).

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that:

The individual is able to work, and is available for work: Provided that, unless temporarily excused by Commission regulations, no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work: Provided further, that an individual customarily employed in seasonal employment shall, during the period of nonseasonal operations, show to the satisfaction of the Commission that such individual is actively seeking employment which such individual is qualified to perform by past experience or training during such nonseasonal period: Provided further, however, that no individual shall be considered available for work for any week not to exceed two in any calendar year in which the Commission finds that his unemployment is due to a vacation. In administering this proviso, benefits shall be paid or denied on a payroll-week basis as established by the employing unit. A week of unemployment due to a vacation as provided herein means any payroll week within which the equivalent of three customary full-time working days consist of a vacation period. For the purpose of this subdivision, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. For purposes of this subdivision, no individual shall be deemed available for work during any week that the individual tests positive for a controlled substance if (i) the test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes, (ii) the test is required as a condition of hire for a job, and (iii) the job would be suitable work for the claimant. The employer shall report to the Commission, in accordance with regulations adopted by the Commission, each claimant that tests positive for a controlled substance under this subdivision. An unemployed individual shall not be disqualified for eligibility for unemployment compensation solely on the basis that the individual is in school.

G.S. §96-13(a)(3).

CONCLUSIONS OF LAW:

The undersigned concludes from the competent and credible evidence and the facts found therefrom that the claimant was

Based on the foregoing, the decision of the Appeals Referee must be (affirmed/reversed/modified). Further, the claimant must be held (eligible) (not eligible) to receive unemployment insurance benefits.

DECISION:

The decision of the Appeals Referee is (**AFFIRMED**)(**REVERSED**)(**MODIFIED**).

The claimant is **ELIGIBLE** to receive unemployment insurance benefits for the week(s) ending . (**NOT ELIGIBLE** to receive unemployment insurance benefits for the week(s) ending .

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

---

Assistant Secretary of Commerce for the  
Division of Employment Security

Decision No.  
Page Four of Five

APPEALS RIGHTS:

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**IMPORTANT – SEE FOLLOWING PAGE**

Decision No.  
Page Five of Five

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Appeal Filed:

Decision Mailed:

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

IN THE MATTER OF:

Decision No.

ATTN:

Claimant

Employer

STATEMENT OF CASE:

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FINDINGS OF FACT:

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Decision No.

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that:

No individual shall be deemed able to work under this subsection during any week for which that person is receiving or is applying for benefits under any other State or federal law based on his temporary total or permanent total disability. Provided that if compensation is denied to any individual for any week under the foregoing sentence and such individual is later determined not to be totally disabled, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which the compensation was denied solely by reason of the foregoing sentence.

G.S. §96-13(a)(4).

CONCLUSIONS OF LAW:

The undersigned concludes from the competent and credible evidence and the facts found therefrom that the claimant was

Based on the foregoing, the decision of the Appeals Referee must be (affirmed/reversed/modified). Further, the claimant must be held (eligible) (not eligible) to receive unemployment insurance benefits.

DECISION:

The decision of the Appeals Referee is (**AFFIRMED**)(**REVERSED**)(**MODIFIED**).

The claimant is **ELIGIBLE** to receive unemployment insurance benefits for the week(s) ending . (**NOT ELIGIBLE** to receive unemployment insurance benefits for the week(s) ending .

This the .

NORTH CAROLINA DEPARTMENT  
OF COMMERCE

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Lynn R. Holmes  
Assistant Secretary of Commerce for the  
Division of Employment Security

Decision No.



**APPEALS RIGHTS:**

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Decision Mailed: